Supreme Court, U.S.
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92-1669

No.

IN THE

SUPREME COURT OF THE
UNITED STATES

October Term, 1992

WILLIE L. HARROD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to
the United States Court of Appeals
for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The 10th Circuit Court of Appeals incorrectly failed to apply the legal principals set forth by the U. S. Supreme Court in Bronston v. United States, 409 U.S. 352, 361 (1973) to criminal prosecutions involving false statements under 18 U.S.C. §1001. Application of the Courts holding in Bronston supports Petitioner's appeal that the District Court failed to sustain Petitioner's motion for acquittal due to insufficient evidence to support the jury's verdict on Count Three.

LIST OF OTHER PARTIES

Petitioner Willie L. Harrod was a defendant charged was under 18 U.S.C. § 1001 on three counts of making a false statement to a federal agency (Vol. I, Doc. 1).

TABLE OF CONTENTS

	Page
Questions Presented For Review	i
List of Other Parties	ii
Table of Contents	iii
Table of Authorities	iv
Opinion Below	1
Jurisdiction of This Court	1
Statutes, regulation and interpretive letters involved in the case	1
Statement of the Case	2
Reasons for Granting the Writ	8
Argument	9
Conclusion	13
Appendix A	15
Appendix B	16

TABLE OF AUTHORITIES

STATUTES:

Constitution of the United States

18 U.S.C. § 1001

CASES:

Bronston v. United States, 409 U.S. 352, 34 L.Ed. 2d 568, 93 S.Ct. 595

Cheek v. United States, 111 S.C. 604 (1991)

United States v. East, 416 F.2d 351, 353

United States v. Goldfine, 538 F.2d 815

United States v. Markee, 425 F.2d 1043, 27 L.Ed. 84

OPINION BELOW

The opinion of the Court Appeals has not yet been reported. It is reproduced in Appendix A to this Petition.

JURISDICTION OF THIS COURT

The judgment of the United States Court of Appeals, Tenth Circuit (App. A, infra. page 15) was entered on December 23, 1992. The jurisdiction of this Court is invoked under Title 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

The statute involved is 18 U.S.C. §1001

CASE LAW

Bronston v. United States, 409 U.S. 352, 34 L.Ed. 2d 568, 93 S.Ct. 595

Cheek v. United States, 111 S.C. 604 (1991)

United States v. East, 416 F.2d 351, 353

United States v. Goldfine, 538 F.2d 815

United States v. Markee, 425 F.2d 1043, 27 L.Ed. 84

STATEMENT OF THE CASE

On October 4, 1990, Harrod was indicted under 18 U.S.C. § 1001 on three counts of making a false statement to a federal agency (Vol. I, Doc. 1). On March 21, 1991, a jury returned a not guilty verdict against Harrod on Counts One and Two and a guilty verdict against Harrod on Count Three (Doc. 27). On July 3, 1991, Harrod received a sentence of three years probation. Harrod timely filed his notice of appeal with the district court clerk (Doc. 38).

STATEMENT OF FACTS

Summary of Trial Testimony

Harrod was employed by the United States Postal Service in 1967 (Tr. Vol. III, p. 490). In 1974 Harrod was injured while working for the postal service and placed on disabled service until 1982 when he returned to work for the postal service (Tr. Vol.

III, pp. 491-2).

In 1984 the Appellant Harrod was again placed on permanent disability by medical doctors as a result of his employment related injury (Tr. Vol. III, p. 492). As a part of Harrod's entitlement to disability income from the postal service he was required by the Department of Labor - Office of Workers' Compensation Program to complete a Form Number EN 1032 on an annual basis beginning in 1985 (Tr. Vol. III, p. 493).

During Harrod's period of disability he became involved in the hobby of making toy trains at the suggestion of his physicians (Tr. Vol. III, p. 495). The construction of toy trains became an activity that the entire Harrod family became involved in, including the Appellant's wife, Betty, his son, Stephen, his daughter, Dorinda and other relatives. Although the Appellant's involvement was minimal due to his physical

disability, it provided him with good rehabilitative therapy as suggested by the doctors (Tr. Vol. III, pp. 446-454).

The Department of Labor was advised as early as July 14, 1987 that Harrod was involved in making and selling toy trains by the rehabilitation office of the Department of Labor (Tr. Vol. I, p. 83 and pp. 110-111).

On April 29, 1988 Harrod completed a Form 1032 (the basis of the charge in Count One of the Indictment. On that form he advised the Department of Labor again that he was involved in making and selling toy trains. Harrod further wrote on the bottom of the Form 1032 "This does help my depression. If this is a no no please let me know." Harrod received no response from the Department of Labor or the Postal Service regarding his inquiry (Tr. Vol. I, p. 114). Additionally, Harrod advised on the same Form 1032 that he

was working four to six hours per week making and selling trains, under the business name of "Toys by Willie". Id. p. 114. Harrod was acquitted on Count One.

The postal service and Department of Labor had knowledge that Harrod was making and selling wooden toys, as it states "....he could still pursue his hobby of making and selling wooden toys."

The Government's witness, Bobbie Jamison, admits that the Department of Labor knew beginning in 1987 that Harrod was making wooden toys, driving to craft shows, setting up the booths and waiting on customers (Tr. Vol. I, pp. 103-104). Jamison testified further that the Department of Labor waited 3 years to follow up on Harrod's answer to the previous 1032 advising of his toy making and selling (Tr. Vol. I, p. 114).

On January 19, 1989 Harrod completed another Form 1032 supplied by the Department

of Labor which asked the same questions as the previous form 1032 completed by Harrod on April 29, 1988. This Form 1032 was the basis of Count Two of the Indictment. Harrod left the portion inquiring of self-employment unanswered, however, at the bottom of page 1 he again advised the Department of Labor that he was helping his wife, son and daughter make and sell wooden toys. Again, Harrod received no response or inquiry from the Department of Labor or United States Postal Service regarding his disclosure or failure to complete all of the answers on the form. Harrod was acquitted on Count Two.

On March 6, 1990 Harrod signed the annual Form 1032 and returned it to the Department of Labor, which was the basis for Count Three of the Indictment. Again, Harrod did not answer all of the questions on page 1 of the form, however Harrod, in response to

question 2(a) "were you self-employed during any time covered by this form? Answer Yes or No: _____", Harrod wrote "No. Under doctors' suggestion - making a few toys to keep mind off pain." During the time period for which the form inquired, Harrod assisted his wife and family in their toy making and selling as much as he had the previous 30 months, the time period for which he had completed Form 1032's. However in September 1988, Harrod's wife Betty quit her regular employment and began making and selling toys on a full time basis with the assistance of her daughter and sister (Tr. Vol. III, p. 448). Harrod never received any compensation for his limited assistance (Tr. Vol. III, p. 449).

Certiorari is sought to review important legal questions and which should be resolved by this Court's exercise of its general supervisory authority.

REASONS FOR GRANTING THE WRIT

The 10th Circuit Court of Appeals incorrectly failed to apply the legal principals set forth by the U. S. Supreme Court in Bronston v. United States, 409 U.S. 352, 361 (1973) to criminal prosecutions involving false statements under 18 U.S.C. §1001. Application of the Courts holding in Bronston supports Petitioner's appeal that the District Court failed to sustain Petitioner's motion for acquittal due to insufficient evidence to support the jury's verdict on Count Three.

ARGUMENT

In this case, insufficient evidence was presented at trial showing that Harrod intentionally made a false statement to a federal agency. The summary of facts are uncontroverted that the Department of Labor had been advised by the Appellant over a three year period that Appellant was making and selling wooden toys.

The answer provided by Harrod on the EN Form 1032 dated March 6, 1990, was not false in that he again, as in previous years, advised the Department of Labor that he was still making toys. Further, the Appellant was not employed and had earned no salary or remunerative income from his toy making activities. The Supreme Court in Bronston v. United States, 409 U.S. 352, 34 L.Ed. 2d 568, 93 S.Ct. 595, considered what constituted a false statement in a prosecution for perjury where the Defendant

gave a literally true answer but unresponsive to the question asked which is the same allegation raised by the government in this matter, although prosecuted under 18 U.S.C. § 1001. The Court in Bronston, Id., found that an unresponsive answer, if it is true, cannot be the basis of prosecution even though it may be likely to mislead. Hence, as the facts in this case present, the Department of Labor was obviously aware for several years that Harrod, as his physical disability permitted, assisted his wife and family in their business of making and selling wooden toys. Yearly, Harrod disclosed this information on the Form EN 1032 and to the rehabilitative specialists for the Department of Labor. However, when the Form EN 1032 dated March 6, 1990 was answered vaguely by the Appellant, the Department of Labor failed to question the answer provided by Harrod.

To willfully make a false statement under 18 U.S.C. § 1001, the Appellant must have "the specific intent of 'bringing about' the forbidden act." United States v. Markee, 425 F.2d 1043, 27 L. Ed. 84. Further, materiality of the statement is an element of §1001 which must be proven by the Government. The test for determining the materiality of the falsification is whether it is: (1) one that could affect or influence the exercise of governments' functions; (2) does it have a natural tendency to influence or is it capable of influencing agency decision? United States v. East, 416 F.2d 351, 353; United States v. Goldfine, 538 F.2d 815. As the evidence in this case indicates it is evident that if Harrod would have answered the questionnaire as he had the previous two years, the jury must acquit him as they did on Counts One and Two. Accordingly, the postal service

would have continued his benefits as before primarily because they had full knowledge of Harrod's activity. Thus, it is illogical to find that the manner in which Harrod answered the Form 1032 was material to the Department of Labor's government function. Simply put, the statement answered was not untrue. More elaboration could have been provided (as is almost always true) however, the Department of Labor was fully aware and did not advise Appellant he was doing anything improper. Clearly, Appellant's disclosures indicate that he had no intent to willfully make a false statement, which the law requires to convict the Appellant, Cheek v. United States, 111 S.C. 604 (1991), as the Appellant had continuously advised the Department of Labor of his toy making activities.

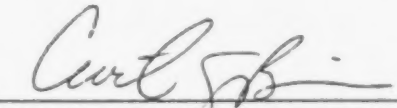
CONCLUSION

The evidence presented at trial clearly proves that the Department of Labor was fully advised of Harrod's toy making activities throughout his period of disability in 1987 through 1990. The answer that Harrod provided on the Form EN-1032 dated March 6, 1990 was not false. Especially when considering it with the history of information provided to the Department of Labor regarding making and selling toys. Secondly, no evidence indicates that the answer was material to the governmental function of the Department of Labor. They did not request any further clarification during any year.

The evidence is not sufficient to sustain the jury's verdict on Count Three and the Court erred in overruling Defendant's Motion for Judgment of Acquittal as urged at the close of the evidence in this matter and

Petitioner requests that this Honorable Court vacate the judgment of the lower court and order the Appellant's Motion for Judgment of Acquittal be sustained.

Respectfully submitted,



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APPENDIX A

See attached Opinion of the Court of Appeals (pp. A-1 to A-12)

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,	)	
Plaintiff-Appellee,	)	
vs.	)	No. 91-5107
	)	(D.C. #CR-90
WILLIE LEE HARROD,	)	133-B)
Defendant-Appellant.	)	

JUDGMENT
Entered December 23, 1992

Before LOGAN, Circuit Judge, BARRETT, Senior Circuit Judge, and EBEL, Circuit Judge.

This cause came on to be heard on the record on appeal from the United States District Court for the Northern District of Oklahoma, and was submitted on the briefs at the direction of the court.

Upon consideration whereof, it is ordered that the judgment of that court is affirmed.

It is the further order of this court that Willie Lee Harrod, appellant, shall, within thirty (30) days from and after the date of the filing of the mandate of this court in the district court, surrender to the custody of the United States Marshal for the Northern District of Oklahoma in execution of the judgment and sentence imposed.

The district court may, in its discretion, permit the appellant to surrender directly to the designated Bureau of Prisons institution for service of sentence.

Entered for the Court

ROBERT L. HOECKER, Clerk

PUBLISH

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

UNITED STATES OF AMERICA,	)	
Plaintiff-Appellee,	)	
vs.	)	No. 91-5107
	)	(D.C. #CR-90
WILLIE LEE HARROD,	)	133-B)
Defendant-Appellant.	)	

Appeal from the United States District Court for the Northern District of Oklahoma (D.C. No. 90-CR-133-B)

Submitted on the Briefs:

Curtis J. Biram, Biram & Kaiser, Tulsa, Oklahoma, for Defendant/Appellant.

Tony M. Graham, United States Attorney, and Kenneth P. Snoke, Assistant United States Attorney, Tulsa, Oklahoma, for Plaintiff/Appellee.

Before LOGAN, Circuit Judge, BARRETT, Senior Circuit Judge, and EBEL, Circuit Judge.*

EBEL, Circuit Judge.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. Therefore, the case is ordered submitted without oral argument.

The defendant-appellant, Willie L. Harrod, appeals a jury verdict finding him guilty of making a false statement to a federal agency in violation of 18 U.S.C. 1001. He asserts that the district court erred in denying his motion for judgment of acquittal on the ground that the evidence was insufficient to support a finding that his statements to the Department of Labor were false and material. We hold that the evidence was sufficient to support a finding of falsity and materiality and therefore affirm.

I. FACTS

The defendant-appellant Harrod worked for the United States Postal Service until 1974, when he was injured and placed on disabled service. In 1982, he returned to work for the postal service, but was placed on permanent medical disability less than two years later. To receive fully

disability benefits from the postal service, Harrod was required by the Department of Labor's Office of Workers' Compensation Programs to complete Form Number EN 1032 annually. The form required the defendant to answer questions relating to whether he was employed and, if so, at what wage and for what number of hours per week.

While disabled, Harrod began making toy trains at the suggestion of his doctors to keep himself busy. At issue in this case is whether Harrod answered the 1032 forms truthfully concerning what became a substantial toy-making business named "Toys by Willie."

On April 29, 1988, Harrod submitted a Form 1032 covering the previous fifteen-month period. He answered the form as follows:

[2] a) Were you self-employed during any time covered by this form? Answer Yes or No:
No. A hobby

b) Description of work performed:
Sales

Number of hours worked per week:
4 to 6 hrs per week

Rate of pay:
$1.85 to 3.35, I am not making a profit. This is a hobby.

Name of firm or business:
Toys by Willie--wooden toys (trains)

3. Were you employed for all periods during the previous fifteen months not covered under 1 or 2 above? Answer Yes or No.
Yes.

If not explain:
See above number 2. My doctors (Dr. Sutton & Dr. Prosser) has [sic] advised me to do something for therapy, to get my mind off my pain, and to get out of the house. My Wife, Daughter, and Son and others help me with this. This does help my depression. If this is a no-no please let me know. Willie L. Harrod.

The government's evidence showed that during the period covered by the 1988 Form 1032, Harrod had gross sales of $5,090.76.

Harrod submitted a second Form 1032 on January 19, 1989, again covering the previous fifteen-month period. He did not answers 2(a), 2(b), or 3 at all on this form. At the bottom of the page, under question 3, he wrote the following:

> I have been helping My Wife & Son Make & Sell wooden toys. I am doing this because several Doctors has [sic] recommended this for therapy to help get my Mind off the pain that I have in My Neck, Arms, back & head. It dosent [sic] help the pain but it does help the Mind. Willie L. Harrod.

During the time period covered by the 1989 Form 1032, Harrod had gross sales of $16,853.38 through the Silver Dollar City Craft Guild alone.

Harrod filed a third Form 1032 on March 6, 1990, which covered the previous fifteen-month period. The defendant answered this form as follows:

> 1. Employment other than Self-Employment. Under this heading, you must report all employment, other than self-employment, for which you received

salary, wages, sales commissions, piecework or other payment. If you performed work in furtherance of a relative's or spouse's business, you must show as "rate of pay" what it would have cost the employer or organization to hire someone to perform the work you performed. The value of housing, meals, food allowance, clothing, equipment, reimbursed expenses in a business, corporation, partnership or sole proprietorship, or other things of value must be included the rate of pay.

* * *

(a) Were you employed by an employer during the time period covered by this form? Answer Yes or No.

No.

2. Self-employment. Self-employment (such as farming sales, service, operating a store, business, etc.), must be reported. Report any such enterprise in which you worked, and from which you received revenue even if operated at a loss or if profits were re-invested. You must show as "rate of pay" what it would have cost you to have hired someone to perform the work you performed.

a) Were you self-employed during any time covered by this form? Answer Yes or No:

No.

Under Doctors [sic] suggestion--making a few toys to keep mind off pain.

***

3. Were you unemployed for all periods during the previous fifteen months covered under 1 or 2 above? Answer Yes

or No:

Yes.

During the time period covered by the 1990 Form 1032, Harrod had gross sales of $34,868.66 through the Silver Dollar City Craft Guild alone.

On October 4, 1990, Harrod was charged in a three-count indictment with making false statements to a federal agency in violation of 18 U.S.C. 1001.[1] The false statements allegedly appeared in his

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[1] 18 U.S.C. 1001 provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

answers to question 2 on the three 1032 forms excerpted above. The case was tried to a jury. At the close of evidence, Harrod moved for a judgment of acquittal, which the court denied. The jury acquitted Harrod of Counts I and II, which involved the 1988 and 1989 forms. However, the jury found him guilty of Count III, which involved the 1990 Form 1032. On appeal, Harrod contends that the district court erred in denying his motion for acquittal because the government's evidence was insufficient to support the jury's verdict on Count Three.

II. SUFFICIENCY OF THE EVIDENCE

In reviewing the denial of the defendant's motion for a judgment of acquittal on the ground of insufficient evidence, we must view the evidence and reasonable inference to be drawn from it in the light most favorable to the government.

United States v. Darrell, 828 F.2d 644, 647 (10th Cir. 1987) (citation omitted). The relevant inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979). In deciding whether the evidence is sufficient under this standard, "we may neither weight conflicting evidence nor consider the credibility of witnesses." Darrell, 828 F.2d at 647 (citations omitted).

To support a conviction for making a false statement to a government agent in violation of 18 U.S.C. 1001, the government must prove "that (1) the defendant made a statement; (2) the statement was false, fictitious, or fraudulent as the defendant knew; (3) the

statement was made knowingly and willfully; (4) the statement was within the jurisdiction of the federal agency; and (5) the statement was material." United States v. Irwin, 654 F.2d 671, 675-76 (10th cir. 1981). cert. denied, 455 U.S. 1016 (1982). Harrod contends that the government failed to offer sufficient evidence to support a finding of two elements: falsity and materiality.

A. Falsity

Looking at the evidence in the light most favorable to the prosecution, the evidence is more than sufficient to support a jury finding that Harrod answered question 2 on his 1990 Form 1032 with a statement he knew to be false. In response to question 2, which asked whether Harrod was self-employed, he answered "No. Under Doctors [sic] suggestion--making a few toys to keep mind off pain." Harrod asserts

that this admittedly vague answer was not false and sufficed to put the Department of Labor on notice that he was still selling toys, as he had admitted to doing in his 1032 forms filed in 1988 and 1989. We disagree.

There is sufficient evidence from which a rational jury could find beyond a reasonable doubt that Harrod was indeed self-employed as a toymaker and that his answer to question 2 was therefore false. The toy company was called "Toys by "Willie"--and Willie is Harrod's first name. Moreover, Harrod was intimately involved in company operations. The government's evidence showed that during the fifteen-month period covered by the 1990 Form 1032, Harrod attended more than twenty-five mall shows for four-day weekends in locations ranging across the country from Georgia to Oklahoma to

Nebraska. At these shows, the defendant handled most of the toy sales; set up and took down booths and displays; carried the equipment to and from a rented van trailer at the end of shows; and worked a pedal-operated antique scroll saw during shows. Looking at the evidence in the light most favorable to the government, we cannot say that the jury could not find beyond a reasonable doubt that Harrod was indeed self-employed in the toy-making business and that he therefore made a false statement in response to question 2.

Although Harrod correctly cites Bronston v. United States, 409 U.S. 352, 361 (1973), for the proposition that an unresponsive answer, if true, cannot be the basis of a perjury prosecution even though it may be likely to mislead, Bronston is inapposite here. Bronston was decided under the federal perjury statute, 18 U.S.C. 1621,

which implicates significantly different policy concerns than does a prosecution under 18 U.S.C. 1001. In explaining its holding in Bronston, the Supreme Court noted that a perjury prosecution in our adversary system is not the primary safeguard against errant testimony; instead, the burden lies with the questioner at trial to target questions precisely to elicit the exact answer sought. Id. at 360, 362. In other words, in the adversary world of trial, it is not the witness's duty to ensure the answer is exactly what the questioner desires to hear. Rather, it is ultimately the interrogator's job to pin down the witness with skillfully asked questions. But no such question-and-answer interplay exists in an 18 U.S.C. 1001 false statement action. When seeking information outside the adversarial context of trial, the government needs and expects

those who answer its inquiries--like Form 1032--to answer truthfully and precisely. In such cases, the respondent is not readily available for cross-examination, as in a perjury trial. In fact, the coversheet of Form 1032 expresses the government's expectation of honest, responsive answers:

> A FALSE OR EVASIVE ANSWER TO ANY QUESTIONS, OR THE OMISSION OF AN ANSWER, MAY BE GROUNDS FOR FORFEITURE OF YOUR COMPENSATION BENEFITS AND SUBJECT YOU TO CIVIL LIABILITY, OR, IF FRAUDULENT, MAY RESULT IN CRIMINAL PROSECUTION.

Thus, because of the different policy concerns underlying perjury and 1001 prosecutions, we believe Bronston is inapposite to Harrod's case.

Harrod further contends that the evidence was insufficient to sustain the jury verdict because the Department of Labor was fully advised of his activities and his answer to question 2 was not false

in light of his prior statements on 1032 forms and in interviews with rehabilitation counselors. We disagree. Although Harrod did indicate that he has selling a few toys in his 1988 and 1989 forms and some Department of Labor employees appeared to be aware of his fact, nothing in the 1990 form suggested that his sales activities had continued into the fifteen-month period covered by the 1990 form, nor do they suggest the true nature of the activity. In fact, Harrod's answer to question 2 on the 1990 form indicated that he was not making the toys for commercial purposes at all. Harrod's tag-on qualification in question 2 that he was "[u]nder Doctors [sic] suggestion--making a few toys to keep mind off pain" did not mitigate the falsity of his "no" answer to question 2. In qualifying his "no" answer, Harrod neglected to mention that he was selling

the "few" toys for gross proceeds of more than $34,000 over a fifteen-month period. We hold that when one answers "no" to a federal inquiry when the answer really is "yes," a qualification that is less than full and complete is insufficient to put the government on notice that the answer is really "yes."

B. Materiality

Harrod also contends that the evidence is insufficient to support the district court's finding that his false answers were material to the governmental function of the Department of Labor. A falsification is material is it "'has a natural tendency to influence, or was capable of influencing, the decision of the tribunal in making a determination required to be made.'" Irwin, 654 F.2d at 677. See generally, Lewis J. Heisman, Annotation, What Constitutes a "Material" Fact for

Purposes of 18 U.S.C. 1001, Relating to Falsifying or Concealing Facts in Matter Within Jurisdiction of United States Department or Agency, 49 A.L.R. Fed. 622 (1980). Because materiality is a question of law, United States v. Daily, 921 F.2d 994, 1004 (10th Cir. 1990) cert. denied, 112 S.Ct. 405 (1991), we review the district court's finding of materiality de novo, United States v. Brittain, 931 F.2d 1413, 1415 (10th Cir. 1991).

We believe that the evidence is adequate to support a finding that Harrod's false answer to question 2 was material because it was capable of causing the Department of Labor to continue permitting Harrod to receive full benefits. The government presented evidence that the 1988 and 1989 forms--which Harrod answered only slightly more completely than the 1990 form--prompted the continuation of full benefits.

For example, a Department of Labor witness testified that a small amount of therapeutic toy making, such as that reported in the 1988 Form 1032, was not anything that would have caused an adjustment in the defendant's full unemployment benefits. Moreover the receipt of the 1989 questionnaire, even though it was only partly answered, nevertheless caused the Department of Labor to continue making unemployment compensation payments. This evidence gives rise to an inference that Harrod's answers to the 1990 Form were capable of influencing the Department of Labor to permit Harrod to continue receiving full benefits. Thus, we find that Harrod's answer to question 2 on the 1990 Form 1032 was material.

III. CONCLUSION

We hold that the evidence was sufficient to support the findings that Harrod made material, false statements to the Department of Labor on his 1990 Form 1032 in violation of 18 U.S.C. 1001. We therefore AFFIRM the district court's denial of Harrod's motion for judgment of acquittal.

APPENDIX B

The Decisions Below

Judgment of the District Court entered on March 21, 1991

Decision of the United States Court of Appeals, Tenth Circuit, entered on December 23, 1992